

## Opinion No. 42-4084

May 8, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Gerald D. Champion Mayor Village of Tularosa Tularosa, New Mexico

{\*193} In your letter of May 7, 1942, you requested the opinion of this office on whether a village has the power to appoint a Police Judge or a new Justice of the Peace when a vacancy occurs in that office.

Section 90-3515, New Mexico Statutes Annotated, 1929 Compilation, provides:

"That the justice of the peace of the precinct wherein any incorporated village is situated shall have jurisdiction of all violations of ordinances made and published by the board of trustees under the provisions of this article."

Section 33-4233, New Mexico Statutes Annotated, 1929 Compilation, provides:

"Whenever any vacancy in any county or precinct office in any of the counties of this state other than a vacancy in the office of county commissioner, shall occur by reason of death, resignation or otherwise it shall be the duty of the board of county commissioners of the county where such vacancy has occurred to fill said vacancy by appointment and said appointee shall be entitled to hold said office until his successor shall be duly elected and qualified according to law."

Section 1 of Chapter 87, Session Laws of 1939, provides that a mayor of a city, town or village may, with the approval of the council, "appoint all officers **except those who may be required by law to be elected** by the voters of the city, town or village." The above section also provides that the mayor, without the consent of the council, may appoint certain temporary police officers or other employees until the next meeting of the council.

Section 1 of Chapter 230, Session Laws of 1939, provides:

"There is hereby created and established a police magistrate court in all incorporated cities and towns, which court shall be presided over by a police magistrate, to be known as a "police judge."

Section 4 of Chapter 230, Session Laws of 1939, provides:

"Such police judges shall be elected for a term of two years at each regular city election, and vacancies may be filled by the mayor, subject to the approval of the city council. The interval between the adoption of this law and the next regular city election shall be deemed a vacancy and shall be filled by appointment as hereinabove provided."

In view of the fact that Chapter 230, Session Laws of 1939, is {*\*194*} expressly limited to cities and towns, and in view of the fact that Section 1, Chapter 87, Session Laws of 1939, is applicable only to appointees who are not elected, I am of the opinion that the village of Tularosa does not have the power to fill a vacancy which occurs in the office of Justice of the Peace. The County Commissioners must designate a person to fill the vacancy, and that person will serve in that capacity until his successor is elected in the next general election.

Trusting the above sufficiently answers your inquiry, I remain

By WILLIAM R. FEDERICI

Asst. Atty. General